

Conclusions of the High-level Tripartite Mission to Colombia

14-18 February 2011

1. Introduction and Overview

At the invitation of the Government of Colombia, an ILO High-level Tripartite Mission (the Mission) visited the country from 14 to 18 February 2011 to review the the implementation of the Tripartite Agreement on the Right of Freedom of Association and Democracy signed during the International Labour Conference in June 2006. This Mission takes place as a follow-up to the High-level Tripartite Visit of 2005, the visit by the Director of the International Labour Standards Department in October 2009 and the Direct Contacts missions that were conducted in 2010 concerning various cases before the Committee on Freedom of Association.

The Mission met with the President of the Republic, the Vice-President of the Republic, the Minister of Social Protection, the Vice-Minister of Labour, the Prosecutor General of the Nation, the Attorney General of the Nation, the Vice-Minister of Defense, the Vice-Minister of the Interior and Justice, the Constitutional Court, the Supreme Court, the Higher Council of the Judiciary, the Governor of Antioquia, the National Association of Employers of Colombia (ANDI), the Single Confederation of Workers of Colombia(CUT), the General Confederation of Workers (CGT) and the Confederation of Workers of Colombia (CTC).

Representatives of Government at all levels with whom the Mission met displayed great openness and transparency and a readiness to address all issues raised. Full respect of all human rights including fundamental principles and rights at work was underlined as being a key policy of Government, on which Colombia's progress and future depended. Insistence on improvements recorded went with clear recognition of the very considerable challenges remaining, and the urgent need to overcome the

many obstacles which remained to the effective implementation of the Tripartite Agreement of 2006 and Conventions Nos. 87 and 98.

The Mission received with the same openness and cooperation from all members of the legal and judiciary bodies with whom it met. They provided important information and insights into complex issues. The Mission came to a clear appreciation of the central role these bodies are and must continue to play in ensuring full respect for freedom of association and collective bargaining.

The Employers' representatives with whom the Mission met displayed great readiness to engage with the Government and the trade union movement in substantive social dialogue. They stressed their positive attitude towards the role of strong trade unions and the hope that it would prove possible to build on the major progress that had been made, particularly in the fight against impunity, to establish constructive industrial relations which would be beneficial to Colombia's economic performance and prosperity.

The views expressed by the three trade union Confederations varied substantially in some regards. Some of the representatives felt that there had been little improvement since 2005 and expressed doubts about the intentions of the Government and of employers. Others, however, did point to improvements in several areas while concurring in the general trade union view concerning the severity of the attacks on the practice of freedom of association and collective bargaining.

The Mission was able to note that the overall level of violence in Colombia had fallen considerably since 2005, including that directed against trade union leaders and trade union members. While opinion was divided on the extent to which trade union leaders and trade union members continued to be targeted because of their trade union activities, all were agreed that the only acceptable situation was one in which all acts of violence have ceased and that there was a need to act with determination to bring this about.

The Mission devoted particular attention to the fight against impunity which has been a key concern of the ILO for many years. All those with whom the Mission met recognized that impunity had prevailed in Colombia for a long period and had caused immense damage to the country and suffering to its people. The Mission was able to note the higher levels of prosecutions and convictions recorded and the significant efforts deployed to strengthen investigation and relevant police and judicial capacity. It commended the start made and the political will behind it. Nevertheless, the Mission was conscious that the great majority of homicide cases remained unresolved, with negative consequences that were made abundantly clear to it by testimonies given by some relatives of the victims.

The Mission identified three main reasons why it is essential that the fight against impunity be carried forward vigorously to a successful conclusion:

1. It is a basic responsibility of Colombian society to provide justice to the victims of violence and their families;
2. Ending impunity is the strongest deterrent to acts of violence in the future; and
3. Effective action against impunity will do much to overcome the painful heritage of Colombia's past and to build trust for the future.

In this regard, the Mission was strongly of the view that the lack of trust between Colombia's tripartite constituents is the most important obstacle to progress towards full respect of the rights guaranteed by ILO Conventions Nos.87 and 98 and towards a better future for all Colombian society.

Distrust generated by the mistakes and abuses of the past remains strong and will not be eliminated easily. Many of those with whom the Mission met expressed open mistrust of the motives and objectives of others, and this clearly constrained their readiness or ability to react positively to the initiatives or actions taken by them. Colombia must break this cycle of distrust. For this reason, the Mission attached the highest priority to the task of strengthening processes of social dialogue. Colombia has the potential for fruitful social dialogue. But renewed and sincere efforts are needed from all

parties to realize that potential. Above all, the Mission urged all parties to dedicate themselves to that task with the assistance of the ILO.

The Mission was deeply concerned at the repeated and detailed information it received concerning acts of anti union discrimination at the enterprise level and in the public sector as well as the failure to take effective action to stop it. Trade union representatives spoke of a generalised climate of anti trade unionism which contrasted strongly with the statements of representatives of both Government and of Employers of their firm support for the role of strong trade unions in Colombian society.

In that light, the Mission noted with regret that the level of trade union density in Colombia, variously estimated at between 4 and 7 per cent, remained very low and collective bargaining lower still. It identified key areas where urgent action is needed to contribute to overcoming this situation:

- Renewed legislative and enforcement measures to put an end to the labour intermediary activities of cooperatives (CTA's), and all other legal and practical obstacles to freedom of association and collective bargaining
- Additional effective legal and practical action to ensure that collective accords concluded by employers with non-union workers are not used against the exercise of freedom of association and collective bargaining
- A major effort to strengthen labour inspection, enforcement, and effective sanctions so that acts of anti union discrimination, including dismissals and intimidation are prevented, or addressed through expeditious, accessible, and effective procedures and remedy.

The Mission is convinced that Colombia has a moment of opportunity that it has not had for many years. That includes the opportunity to ensure full respect of the rights of freedom of association and collective bargaining, and all other fundamental principles and rights at work. That, in turn, would open perspectives for a new phase of its development characterized by decent work, and social and economic justice. The Mission was able to observe the political will which, together with the favourable economic climate of strong

growth, make these objectives achievable if the obstacles and distrust which are the legacy of the past can be overcome.

The Mission expresses the profound hope and conviction that this is the path that Colombians will take. It is equally convinced that the principles, values and expertise of the ILO can be of great value in this regard.

While it received differing views on the effectiveness of the follow-up to the Tripartite Agreement of 2006, the Mission took the view that the Agreement had been of considerable value both as an expression of common commitment to work together for shared objectives and in triggering action in a number of areas, including the fight against impunity. The Mission believes that the Agreement provides a sound foundation for immediate and additional action..

In the light of experience with the 2006 Agreement, whatever the difficulties in its follow-up, and the circumstances now prevailing in Colombia, the Mission invited the tripartite Colombian constituents to give consideration to the possibilities and advantages of updating it, with a view to establishing firm consensus on action to be taken to address the matters identified in this report and to agree how the ILO can best assist in that process. That might involve a renewed ILO presence in Colombia.

Specific Issues

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1. Social Dialogue

In the light of the importance attached by the Mission to promoting trust between the constituents, it strongly urges that priority action be taken to strengthen social dialogue. In this regard, the National

Commission on Policy Dialogue and Salaries (Comisión Nacional de Concertación de Políticas Laborales y Salarios) has a fundamental role to play, particularly as it is the only tripartite body that meets on a regular basis including meetings with the President of the Republic. In addition to action at the national level, good practices of social dialogue at the enterprise, regional and local levels should be actively promoted.

The functioning of the Special Commission for the Handling of Conflicts before the ILO (CETCOIT), does not seem to have met the expectations of some of the tripartite constituents. . Nevertheless, the Mission considers that it has a crucial role to play in addressing in some of the issues that the Mission has been examining. Therefore the Mission urges all constituents to engage positively in a new effort to make CETCOIT function effectively. To this end, the Mission urges by April 2011 that:

- An early agreement on an independent personality acceptable to all parties should be reached to Chair the CETCOIT;
- Consideration be given to the establishment of departmental structures of the CETCOIT;
- An analysis of the functioning and the possibilities of assistance and strengthening of the CETCOIT, including a review of its terms of reference. (March/April)

Consideration should be given as to whether additional mediation mechanism should be created.

2. Violence and Impunity

Notwithstanding improvements, violence and impunity remain present in the society and therefore a major challenge.

Concerning cases 1787 and 2761 before the ILO Committee on Freedom of Association, the Mission heard testimony that there continued to be murders and other acts of violence against trade union leaders and trade unionists. At the same time, information provided demonstrated that the number of these serious crimes have significantly reduced in recent years. The importance of continued protection by the Government for trade union leaders and trade union members was highlighted.

The Mission also took note of the important improvements made in the investigations of the cases of murders and the sentencing of the material authors of these crimes against trade union leaders and trade union members. In this regard, the Mission notes the contribution made by the Trade Union Members Sub-Unit of the National Human Rights Unit of the Office of the Attorney General of the Nation as well as by the Judiciary in sentencing those found guilty. The Mission noted that this development was a direct result of the 2006 Tripartite Agreement.

The Mission, while taking into account the above, underlined that the majority of the cases have not yet been investigated nor have the perpetrators, including the intellectual authors of these crimes, been brought to justice.

The Mission noted the adoption of legislation in 2009 (Act 1309) which significantly increased the sanctions for perpetrators of acts of violence against trade unionists as well as the prescriptive period for such crimes as a positive development.

The Mission noted that the 25 more recent cases of homicides included in Case 2761 before the ILO Committee on Freedom of Association are not currently with the Sub-Unit on Human Rights but that a decision had been made to transfer these cases to the Sub-Unit. It is clear to the mission that in

order for the Sub-Unit to make greater progress in the investigations to enable prosecution and sentencing to take place, the number of prosecutors and investigators assigned to that Unit would have to be increased in accordance with the commitment made by the Government to the ILO mission in 2009. The Mission also emphasizes the importance of strengthening the direct contacts with trade union organizations in these investigations either through the Prosecutor-General's Office or the Attorney General.

The Mission received information that the Draft Law on Reparations for Victims of Violence includes provisions for individual reparations as well as collective reparations for trade union organizations affected by the violence. The Mission expressed the firm hope that the trade unions would be consulted in the process of the elaboration of the Draft Law and that when it is adopted, it would provide effective reparations for those concerned. .

With regard to on-going ILO processes, the Mission recommends that:

- in the framework of the National Commission on Social Policy and Salaries, the complainants in cases Nos. 1787 and 2761 before the ILO Committee on Freedom of Association should provide by April 2011 all the available information concerning the alleged facts to enable the Prosecutors' Office to undertake the corresponding investigations.
- the Government should send by August 2011 additional observations concerning cases Nos. 1787 and 2761, indicating the stage of the investigation of each case and if those responsible have been identified.

The Mission was made aware of considerable divergences of opinion about the number of acts of violence against trade unionists which were motivated by their trade union activity and those which were the result of various other factors. In order to promote greater clarity and accuracy in this matter, the Mission encourages tripartite cooperation with a view to reaching an agreed

position on the classification of homicides so that those pertaining to freedom of association can be clearly identified and effectively pursued.

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The Mission also proposes that an analysis, involving the participation of trade unions, should be undertaken by May 2011 of the protection that should continue to be provided to trade union officials, trade union members and the premises of trade unions.

2. Acts of anti-union discrimination and other obstacles to the exercise of freedom of association and collective bargaining

During the meetings not only with the trade unions but also with the courts, serious concern was expressed regarding the increasing use of associated work cooperatives as well as collective accords in enterprises with non-unionized workers which were having a severe impact on the exercise of the right to freedom of association and collective bargaining. It was also indicated that this was having a direct impact on trade union membership. Information was also provided on frequent cases of anti-union dismissals as a consequence of the exercise of the right to create or join a union.

The Mission is particularly concerned by the information given during its meeting with the Supreme Court that in cooperatives only dependent workers would enjoy the right to form or join trade unions. In the light of this information, the Mission believes that the legal provisions regulating Cooperatives should be modified to bring them in line with the ILO Conventions concerning freedom of association and the recognition of the right to collective bargaining. The Mission also received information that outsourcing of workers from cooperatives and various forms of contracting served as obstacles to the full exercise of freedom of association. The Mission recommends that effective

measures be taken, with the assistance of the ILO, to eliminate the legal and practical obstacles to freedom of association and collective bargaining.

3. Pending legislative questions

To date, limited legislative measures have been taken to address outstanding issues concerning compliance with freedom of association and collective bargaining Conventions. The Mission welcomes several Constitutional Court rulings addressing some of the legislative issues that have been raised by the supervisory bodies of the ILO. However, the Mission underlines that extensive legislative action would need to be vigorously pursued to ensure full application of Conventions Nos. 87 and 98.

The Mission proposes that the Government submits by September 2011 proposals on legislative measures for consultation to the National Commission on Social Policy and Salaries prior to their submission to Congress. In this regard, priority should be given to cooperatives (CTAs) and collective accords.

4. Labour Inspection

The Mission noted the consensus among the tripartite constituents on the importance of and urgency to strengthen the labour inspectorate in the country. This would be crucial to address respect for and compliance with the national legislation, including the issues raised concerning the use of associated work cooperatives and the acts of anti-union discrimination in the enterprise. The Mission takes note of the information provided by the Vice-Minister of Labour of the recent

action taken to dedicate more resources to the labour inspectorate. Welcoming these measures, the Mission urges that further steps are taken to ensure that labour inspectors would be able to adequately and effectively undertake their functions in respect of the most important issues concerning the enforcement of the labour legislation and preventive measures and eventual remedies, with a special attention to freedom of association and collective bargaining.

The Mission noted with interest that a separate Ministry of Labour would be established in August and trusts that this will provide the improved responsiveness of the Government to all issues raised with it.

7. Training

With a view to strengthening social dialogue in the country, continued training and capacity building for all the tripartite constituents would be indispensable. The training efforts already being undertaken would need to be strengthened. In addition to the social partners, training should also be extended to the various State institutions, including the Prosecutor General's Office, the Ministry of Defence, the Ministry of the Interior and Justice, the Attorney General's Office, the Supreme Court, the Constitutional Court as well as the Higher Council of the Judiciary.

8. Role of the ILO

The Mission concludes that there is an important role for the ILO in capacity and skills-building and other activities to support the fulfilment of the conclusions of this Mission and the full implementation of Conventions Nos. 87 and 98.

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